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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211414
Party	Plaintiff Purapharm International (H.K.) Limited
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Date	09/24/2014
Attachments	Purapharm's Reply.pdf(13375 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No: 79/124353

Filed on: October 30, 2012

For the mark: **PURE**  **PHARMA**

Date of Publication in the Official Gazette: June 4, 2013

PURAPHARM INTERNATIONAL (H.K.)
LIMITED,

Opposer,

v.

PUREPHARMA APS,

Applicant.

Opposition No. 91211414

**OPPOSER, PURAPHARM INTERNATIONAL (H.K.) LIMITED'S
REPLY IN FURTHER SUPPORT OF ITS MOTION TO
RE-OPEN DISCOVERY AND RE-SET DEADLINES**

Opposer, PuraPharm International (H.K.) Limited (“Opposer”), by and through its undersigned counsel, hereby files this reply in further support of its Motion to Re-Open Discovery and Re-Set Deadlines in the Case (“Motion”), should the Board grant Applicant, Purepharma APS’s (“Applicant”) Motion for Leave to Amend.

It appears that Applicant does not oppose Opposer’s request to re-set deadlines in the case, as this issue was not addressed in Applicant’s Reply in Further Support of Motion for Leave to Amend filed on September 9, 2014. Furthermore, the Board has already suspended this case, pending resolution of Applicant’s Motion for Leave to Amend. Pursuant to Trademark Rule 1.227(d), proceedings will be resumed pursuant to an order of the Board when the motion is decided. Thus, this portion of Applicant’s Motion should be granted.

With respect to Opposer's request to re-open discovery, Opposer seeks only to re-open discovery with respect to allegations made by Applicant in its proposed restriction counterclaim. Opposer should, in all fairness, be permitted to test such allegations. Specifically, in paragraph 44 of the Proposed Amended Answer, Applicant states that

all of Opposer's goods are sold through channels of trade to consumers differing materially from Applicant. Specifically, Opposer's goods are sold either exclusively to practitioners of Chinese medicine who dispense the products or to persons seeking Chinese herbal remedies; whereas Applicant's goods are not. Applicant's goods are **athletic recovery and performance enhancers** not in the nature of Chinese herbal remedies and medicines.

See Applicant's Proposed Amended Answer, ¶ 44 (emphasis in original). Further, in paragraph 46 of Applicant's proposed Amended Answer, Applicant seeks to amend its application to limit its goods to "Athletic recovery and performance enhancers not in the nature of Chinese herbal remedies and medicines." *Id.* at ¶ 46. As Applicant's application currently stands, it does not contain any such restrictions as to channels of trade or purchasers, and Opposer's registration does not contain any restrictions as to trade channels or purchasers either. Thus, for purposes of the likelihood of confusion analysis, the trade channels are deemed to be those normal for the trade. See *Kangol Ltd. v. Kanga ROOS USA*, 974 F.2d 161, 164, 23 USPQ2d 1945 (Fed. Cir. 1992).

However, now that Applicant has alleged that its goods are sold through channels of trade to consumers differing materially from Opposer's goods and seeks to restrict its application, Opposer should be given the opportunity to test Opposer's allegations, should the proposed Amended Answer be allowed by the Board. Particularly, Opposer should be permitted to further explore the channels of trade of Applicant's goods and determine whether the restriction Applicant seeks of its own application is appropriate. Discovery may bear out that Opposer's application should be further restricted.

For the reasons stated above, should the Board allow Applicant to amend its Answer to add Counterclaims against Opposer, the Board should re-open discovery and re-set all deadlines in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2014, a true and correct copy of the foregoing has been served on the Applicant by e-mailing a copy thereof to Applicant's attorney of record, Carla Calcagno, Esq., Calcagno Law PLLC, 1250 24th Street, N.W., Suite 300, Washington, D.C. 20037, Carla.calcagno@calcagnolaw.com and cccacagno@gmail.com.

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